

123 FERC ¶61,084  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Empire District Electric Company

Docket Nos. ER99-1757-011  
ER99-1757-013  
EL05-67-000  
EL05-67-001

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 25, 2008)

1. In this order, the Commission denies a request for rehearing of the Commission's August 15, 2006 order<sup>1</sup> conditionally accepting for filing Empire District Electric Company's (Empire) mitigation proposal applicable to sales of electric power at wholesale for transactions in the Empire balancing authority area.<sup>2</sup> In this order, the Commission also conditionally accepts a compliance filing made pursuant to Order No. 697.<sup>3</sup>

**Background**

2. On May 13, 2004,<sup>4</sup> the Commission addressed the procedures for implementing the generation market power screens announced on April 14, 2004 and clarified on

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<sup>1</sup>*Empire District Electric Co.*, 116 FERC ¶ 61,150 (2006) (August 15 Order).

<sup>2</sup>We note that the Commission adopted the use of "balancing authority area" instead of "control area" in *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 at P 250, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule).

<sup>3</sup>Order No. 697, FERC Stats. & Regs. ¶ 31,252.

<sup>4</sup>*Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

July 8, 2004.<sup>5</sup> On September 27, 2004, and September 28, 2004, as amended on December 15, 2005, Empire submitted its updated market power analysis in compliance with the May 13 Order. In its order issued March 3, 2005,<sup>6</sup> the Commission found that Empire failed the wholesale market share screen for each of the four seasons considered in Empire's balancing authority area. Accordingly, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>7</sup> to investigate generation market power in the Empire balancing authority area, and to determine whether Empire may continue to charge market-based rates within the Empire balancing authority area. The Commission also established a refund effective date of May 16, 2005.

3. In the March 3 Order, the Commission directed Empire to either: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates. The Commission also directed Empire to revise section 5 of its market-based rate tariff to include a statement that Empire will not make any sales to affiliates without first receiving Commission authorization of the transaction under section 205 of the FPA<sup>8</sup> and to incorporate the change in status reporting requirement adopted in Order No. 652.<sup>9</sup>

4. On March 31, 2005, Empire filed revised tariff sheets which included: (1) language requiring prior Commission authorization pursuant to section 205 of FPA before Empire engages in any affiliate transactions under its tariff; and (2) the change in status reporting requirement adopted in Order No. 652.

5. On May 2, 2005, Empire submitted a mitigation proposal that Empire stated would eliminate its ability to exercise market power within its balancing authority area. Empire

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<sup>5</sup>*AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at P 151-55 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>6</sup>*Empire District Electric Company*, 110 FERC ¶ 61,214 (2005) (March 3 Order).

<sup>7</sup>16 U.S.C. § 824e (2000).

<sup>8</sup>16 U.S.C. § 824d (2000).

<sup>9</sup>*Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, FERC Statutes & Regs. ¶ 31,175, 110 FERC ¶ 61,097 (2005).

proposed to amend its market-based rate tariff to prohibit sales that “sink” in Empire’s balancing authority area. Specifically, Empire proposed to amend section 3 of its market-based rate tariff to provide that no Mitigated Sales shall be made under this tariff. The term “Mitigated Sales” was defined in the tariff as “physical sales of power and/or energy that sink in the [balancing authority] area presently operated by Empire within Southwest Power Pool, Inc. (SPP).”<sup>10</sup> Empire stated that Mitigated Sales do not include sales into markets administered by the SPP. Empire states that Mitigated Sales for periods of one year or less will be made under Schedules A or C, as applicable, of Western Systems Power Pool (WSPP) Rate Schedule FERC No. 6, as it may be amended from time to time (WSPP Agreement). Empire also stated that Mitigated Sales of greater than one year will not be made prior to Empire first submitting a separate filing and receiving Commission authorization of the transaction under section 205 of the FPA. Empire requested that the revised tariff be made effective on May 16, 2005, the refund effective date established by the Commission in the March 3 Order.

6. On December 8, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request directing Empire to answer various questions pertaining to the WSPP Agreement and its applicability in this proceeding.

7. On January 9, 2006, Empire submitted a response to the December 8, 2005, data request. Empire asserted that the WSPP Agreement is a Commission-approved cost-based rate schedule, and that the Commission has approved the use of the WSPP Agreement for purposes of mitigating market power in other cases.<sup>11</sup> Empire stated that the WSPP Agreement’s demand charge is consistent with Empire’s costs for the units expected to provide the service, is consistent with long-standing Commission precedent concerning the pricing of cost-based power sales, and is, therefore, tailored to Empire’s particular circumstances. Empire stated that, if a non-WSPP member requests to transact with Empire for a sale that would sink in the Empire balancing authority area, Empire

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<sup>10</sup>Empire May 2, 2005 Compliance Filing at 2.

<sup>11</sup>*Citing Western Resources, Inc.*, 94 FERC ¶ 61,050 (2001) (accepting WSPP Agreement to mitigate potential affiliate preference concerns between prospective merger partners); *Portland General Elec. Co.*, Docket No. ER04-199-000 (December 31, 2003) (unpublished letter order) (accepting revised market-based rate settlement that used cost-based rate caps under the WSPP Agreement to address code of conduct issues); *El Paso Elec. Co.*, 105 FERC ¶ 61,107 (2003) (accepting sales under the cost-based rate caps of the WSPP Agreement during two-year suspension of the utility’s market-based rate tariff).

will file an appropriate rate schedule with the Commission prior to consummating the transaction.

### **August 15 Order**

8. In the August 15 Order, the Commission accepted Empire's proposed use of the WSPP Agreement<sup>12</sup> as mitigation for sales made in the Empire balancing authority area, but added that its acceptance was subject to the outcome of Order No. 697 and any determinations that the Commission makes regarding mitigation in that proceeding.

9. The Commission accepted Empire's proposed revisions to its market-based rate tariff, subject to certain modifications. The Commission found that Empire's proposed tariff language (which defined "mitigated sales" as physical sales of power and/or energy that sink in the Empire balancing authority area) would improperly limit mitigation to certain customers in the Empire balancing authority area, namely, only to sales to those buyers that serve end-use customers in the Empire balancing authority area. The Commission found that such a limitation would not mitigate Empire's ability to exercise market power over sales and is inconsistent with the Commission's directives in the April 14 Order and July 8 Order, as well as the Commission's precedent approving mitigation for other entities that failed the indicative screens.<sup>13</sup> The Commission, therefore, directed Empire to file revisions to its market-based rate tariff to provide that service under the tariff applies only to sales outside the Empire balancing authority area, effective as of the refund effective date in this proceeding, May 16, 2005.

10. Additionally, the Commission directed Empire to remove the proposed tariff language which provided that Mitigated Sales do not include sales into markets administered by SPP. The Commission also directed Empire to remove revisions to its market-based rate tariff that referenced its cost-based mitigation proposal.

11. Finally, the Commission stated that Empire's commitment that sales in the Empire control area greater than one year shall not be made prior to Empire first submitting a

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<sup>12</sup>We note, however, that on February 2, 2008, the Commission issued an order on the WSPP Agreement rates requiring sellers currently using the WSPP Agreement as mitigation to provide cost justification to demonstrate that use of the WSPP "up to" demand charge is just and reasonable. *Western Sys. Power Pool*, 122 FERC ¶ 61,139, at P 22 (2008).

<sup>13</sup>*See, e.g., MidAmerican Energy Company*, 114 FERC ¶ 61,280 (2006) (*MidAmerican*).

separate filing and receiving Commission authorization of the transaction under section 205 was inconsistent with the April 14 Order, in which the Commission required long-term mitigation to apply to sales of one year or longer.<sup>14</sup> Accordingly, the Commission found that its acceptance of Empire's use of the WSPP Agreement for mitigation purposes was conditioned on that proposal applying only to sales of *less than* one year. Similarly, the Commission accepted Empire's commitment to seek prior authorization for long-term sales to the extent that such commitment applies to sales of one year or longer. Further, the Commission interpreted Empire's proposal to be that sales of one year or longer will be made at cost-based rates and accepted Empire's proposal on the condition that any such sales be cost-justified.<sup>15</sup> The Commission directed Empire to state whether it accepts these modifications to its mitigation proposal within 30 days of the date of the order.

### **Compliance Filing**

12. Following issuance of the August 15 Order, Empire District filed a motion for an extension of time to make the refunds, pending the issuance of an order on rehearing of the August 15 Order. On September 5, 2006, the Commission granted the extension to and including 15 days after the issuance of an order on rehearing of the August 15 Order.

### **Request for Rehearing**

13. On September 14, 2006, Empire filed a request for rehearing. Empire argues that the Commission has failed to demonstrate that Empire's proposal is unjust or unreasonable, and that the Commission's finding in the August 15 Order that Empire has market power is not supported by substantial evidence. It argues that it has no market power over off-system buyers. It contends that it cannot exert market power over these buyers and sellers, which include utilities in SPP that are both much larger than Empire and are sophisticated power traders. Empire also contends that the Commission used the wrong standard in the August 15 Order when it stated it was concerned about Empire's "ability to attempt to exercise market power."<sup>16</sup> Empire argues that the standard instead has been whether a utility has "both the ability and incentive" to raise prices.<sup>17</sup>

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<sup>14</sup>April 14 Order, 107 FERC ¶ 61,018 at P 155.

<sup>15</sup>August 15 Order, 116 FERC ¶ 61,150, at P 21 (2006).

<sup>16</sup>Empire Request for Rehearing at 13 (citing August 15 Order, 116 FERC ¶ 61,150 at P 16).

<sup>17</sup>*Id.*

Additionally, Empire maintains that the Commission's apparent conclusion that Empire has market power over off-system purchasers who voluntarily transact in its balancing authority area runs contrary to court precedent. Empire points out that the courts have questioned "the Commission's past attempts to protect buyers who voluntarily subject themselves to a seller's market power."<sup>18</sup>

14. Further, Empire contends that the Commission found that Empire lacks market power over buyers outside its balancing authority area, yet nonetheless found that Empire has market power over these same buyers if the point of sale is inside the Empire balancing authority.<sup>19</sup> Thus, Empire adds, it could have engaged in economically identical transactions without running contrary to the Commission's new mitigation policy by changing the delivery points.

15. Empire argues that the August 15 Order departs from Commission precedent without providing a reasoned explanation for the change. Empire states that it followed the AEP mitigation plan,<sup>20</sup> which the Commission subsequently accepted. It contends that Empire relied upon a line of Commission precedent in six other cases accepting the sink-based mitigation standard, which the Commission abruptly changed on March 17, 2006. Empire notes that it followed the same mitigation plan as AEP's, which was accepted by the Commission, and points out that AEP's proceeding was heavily contested while Empire's was uncontested. Empire argues that the August 15 Order was arbitrary and capricious because it retroactively applied a new Commission policy to Empire that was announced in the *MidAmerican* proceeding after Empire filed its mitigation plan.<sup>21</sup> Additionally, Empire argues that SPP has already adopted Commission-approved market power mitigation rules that adequately mitigate any possible market power that Empire might have had over its wholesale customers. Empire contends that the August 15 Order ignores this precedent, and failed to explain why SPP's plan is inadequate to mitigate Empire's market power. Empire contends that the Commission erroneously rejected Empire's proposal to exclude from mitigated sales

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<sup>18</sup>Empire Request for Rehearing at 13, citing *Potomac Electric Power Co. v. FERC*, 210 F.3d 403, 411 (D.C. Cir. 2000) (*Potomac Electric Power*), citing *Northeast Utilities Serv. Co. v. FERC*, 993 F.2d 937, 961 (1<sup>st</sup> Cir. 1993) (*Northeast Utilities*).

<sup>19</sup>*Id.* at 14.

<sup>20</sup>See *AEP Power Marketing, Inc.*, 112 FERC ¶ 61,047 (2005) (*AEP*) (accepting proposed cost-based rates and establishing hearing procedures).

<sup>21</sup>Empire Request for Rehearing at 20-21.

those sales made into the energy imbalance market administered by SPP. Empire further contends that, in doing so, the Commission overlooked a recent decision allowing mitigated sellers to make such sales, as well as Empire's filing to comply with that decision.<sup>22</sup> Lastly, Empire contends that, even if the Commission concludes its rulings in the August 15 Order were correct, it should use its equitable powers to relieve Empire of its refund obligation. Empire contends that it relied upon the approach toward mitigation that the Commission had endorsed in several previous cases. Empire adds that all the buyers to whom it would make refunds had alternatives to purchases from Empire, which, Empire argues, means that Empire could not impose prices upon them. Empire further contends that, if refunds were ordered, it would be obligated to pay refunds to some of the larger power buyers and sellers in the area. Empire states that the Commission's rulings could cost Empire and/or its retail customers \$600,000 or more.

### **Commission Determination**

16. In the August 15 Order, the Commission rejected Empire's proposed "sink" language because it determined that such tariff language would not properly mitigate Empire's potential to exercise market power in the Empire balancing authority area. The Commission found that the proposed tariff language would improperly allow Empire to make market-based rate sales within the Empire balancing authority area to any entities that do not serve end-use customers in the balancing authority area. Accordingly, the Commission directed Empire to revise its market-based rate tariff to define mitigated sales as sales in the Empire balancing authority area. We affirm that finding here and therefore will deny Empire's request for rehearing.

17. Empire's argument that the Commission's traditional market power analysis is concerned with the ability and incentive to exercise market power and that the Commission wrongly applied a lower standard in the August 15 Order when it stated that Empire's mitigation proposal would not mitigate its "ability to attempt to exercise market power over sales in the mitigated control area" is inaccurate. None of the cases Empire cites in support of its claim that the Commission also is concerned with the seller's incentive to exercise market power are market-based rate cases. Rather, with regard to whether the Commission grants a seller's request to obtain or retain market-based rate

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<sup>22</sup>*Id.* at 25 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 (2006)).

authority, the Commission's market power analysis considers historical data to determine whether the seller has the ability to exercise market power.<sup>23</sup>

18. Empire's reliance on *Potomac Electric Power* and *Northeast Utilities* is also misplaced. In those cases, the courts were discussing the Commission's obligations to protect customers in the face of contracts that limited the Commission to review under the public interest standard of review, rather than the just and reasonable standard of review.<sup>24</sup> That is not the situation here.

19. In regard to Empire's argument about inconsistent treatment, we recognize that, in some prior orders, the Commission accepted certain mitigation proposals that included the sink language we rejected in this proceeding. However, as we explained in *South Carolina Electric and Gas Company*, after further review (subsequent to those other orders), the Commission concluded that the sink language was insufficient mitigation of the seller's potential to exercise market power.<sup>25</sup> The Commission also realized that prohibiting only market-based rate sales that sink in the balancing authority area was inconsistent with the Commission's determinations in the April 14 and July 8 Orders. Therefore, the Commission directed market-based rate sellers who have been found or presumed to have market power to remove the sink language and instead, adopt tariff language that reflects their commitment to not make any sales at market-based rates within the balancing authority area.<sup>26</sup>

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<sup>23</sup> See, e.g., Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 36, 70 (explaining that the horizontal market power screens examine the seller's ability to exercise market power).

<sup>24</sup> See *United Gas Pipe Line Co. v. Mobile Gas Serv.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

<sup>25</sup> The Commission stated that all sellers are subject to the requirements of Order No. 697 and thus may not limit mitigation to sales that "sink" in the balancing authority area where the mitigated seller has been found, or presumed, to have market power. Rather, such sellers are required to comply with the mitigation policy as stated in Order No. 697. See, Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 7; *South Carolina Electric & Gas Co.*, 121 FERC ¶ 61,263, at P 12 (2007); *LG&E Energy Marketing, Inc.*, 122 FERC ¶ 61,175, at P 32 (2008).

<sup>26</sup> See, e.g., *MidAmerican*, 114 FERC ¶ 61,280, at P 33.



20. Additionally, since the issuance of the August 15 Order, the Commission has further addressed mitigation issues in Order No. 697, and considered and rejected arguments similar to those raised by Empire, such as that the Commission erroneously focused on the physical location of the transaction's point of sale. In Order No. 697, the Commission concluded that adequately protecting customers from the potential exercise of market power required that it continue to apply mitigation to *all* sales in the balancing authority area in which a seller is found, or presumed, to have market power.<sup>27</sup> In this regard, the Commission rejected proposals that it limit mitigation to sales that "sink" in the balancing authority area in which the seller is mitigated.<sup>28</sup> The Commission noted that allowing a seller that has been found to have market power, or has so conceded, to make market-based rate sales in the very market in which market power is a concern is inconsistent with the Commission's responsibility under the FPA to ensure that rates are just and reasonable and not unduly discriminatory or preferential.<sup>29</sup> The Commission further stated that, while it generally agrees that it is desirable to allow market-based rate sales into markets where the seller has not been found to have market power, it does not agree that it is reasonable to allow a mitigated seller to make market-based rate sales *anywhere* within a balancing authority area in which the seller has been found to have market power, or has so conceded, as it is unrealistic to believe that such sales could be effectively monitored to ensure against improper sales.<sup>30</sup> However, the Commission stated that it would allow mitigated sellers to make market-based rate sales within a mitigated balancing authority area at the metered boundary with a balancing authority area in which the seller has market-based rate authority under certain circumstances.<sup>31</sup>

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<sup>27</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 817.

<sup>28</sup> *Id.* P 818.

<sup>29</sup> *Id.* P 819.

<sup>30</sup> *Id.* P 818-19.

<sup>31</sup> Such sales will be allowed provided: (i) legal title of the power sold transfers at the metered boundary of the balancing authority area where the seller has market-based rate authority; (ii) any power sold is not intended to serve load in the seller's mitigated market; and (iii) no affiliate of the mitigated seller will sell the same power back into the mitigated seller's mitigated market. The seller must retain, for a period of five years from the date of the sale, all data and information related to the sale that demonstrates compliance with items (i), (ii), and (iii) above. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 830. The required tariff provision need not also be effective September 18, 2007, and may be effective as of the date that the market-based rate seller commences

(continued)

21. As discussed above, Empire also argues that the August 15 Order was an abuse of discretion because it applied a new Commission policy to Empire that was announced in another proceeding after Empire filed its mitigation proposal. We disagree. The Commission is responsible for adequately protecting customers from the potential exercise of market power. Even though the Commission's policy has developed through a series of Commission orders as well as a rulemaking proceeding that resulted in Order No. 697 since Empire filed its mitigation proposal on May 2, 2005, we find that it would be inconsistent to permit sink-based sales for some companies and not others. Instead, we find that, as we stated in Order No. 697, a more consistent approach would be to apply mitigation to all sales in the balancing authority area in which a seller is found, or presumed, to have market power.

22. In addition, we note that Empire's argument that the Commission ignored its precedent regarding sales into markets administered by SPP was addressed in a subsequent order issued November 13, 2006.<sup>32</sup> In the November 13 Order, we accepted tariff revisions proposed by Empire stating that its tariff is applicable "to all sales in the [SPP] energy imbalance market, even if title transfers at a point within the Empire control area, subject to the rules and mitigation specific to SPP's energy imbalance market."<sup>33</sup> We accepted these revisions effective as of the date on which the SPP initiates its energy imbalance market, noting that the Commission has previously found that the SPP imbalance market is competitive in the absence of transmission constraints and because the SPP's mitigation measures and monitoring plan are sufficient to protect customers from the exercise of market power that might occur in the energy imbalance market when transmission constraints bind.<sup>34</sup>

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making market-based rate sales at the metered boundary. As discussed below, Empire made such a filing on September 17, 2007.

<sup>32</sup>*Empire District Electric Co.*, 117 FERC ¶ 61,182, at P 11 (2006) (November 13 Order).

<sup>33</sup>*Id.*

<sup>34</sup>*See Southwest Power Pool, Inc.*, 116 FERC ¶ 61,289, at P 30 (2006). On March 2, 2007, Empire informed the Commission that SPP initiated its energy imbalance market on February 1, 2007. Accordingly, Empire's authority to sell imbalance energy into the SPP energy imbalance market under its market-based rate tariff became effective as of that date. Empire Informational Filing, Docket Nos. ER06-1312-000, ER06-1312-001, ER99-1757-012 and EL05-67-001 (March 2, 2007).

23. Therefore, we believe that we have fully explained the basis of our rejection of Empire's mitigation proposal, including how such a rejection was consistent with Commission policy. We also deny Empire's request that we waive refunds. We disagree that refunds would be an undeserved windfall for off-system customers at the expense of Empire's retail ratepayers. Ordering refunds in this instance is consistent with Commission policy that "[a]pplicants that have a presumption of market power . . . will have their rates prospectively made subject to refund."<sup>35</sup>

24. Accordingly, Empire is hereby required to pay refunds with interest within 15 days after the issuance of this order. Empire is also directed to file a refund report within 15 days after making refunds.

25. The Commission will terminate Docket No. EL05-67-000. That proceeding was established to investigate horizontal market power issues in the Empire balancing authority area. Based on the above findings, the Commission finds that there is no need for further investigation in this docket.

### **Compliance Filing**

26. On September 17, 2007, Empire made a filing which revised its market-based rate tariff sheets to incorporate standard required provisions adopted in Order No. 697 and to remove certain tariff sheets regarding transmission-related services.<sup>36</sup> These tariff revisions include a standard applicable provision regarding mitigated sales to permit Empire to make sales of energy and capacity under its market-based rate tariff in non-mitigated areas, and, to the extent necessary, to make sales of energy and capacity under its market-based rate tariff at the metered boundary between the mitigated balancing authority area and a balancing authority area where Empire has been granted market-based rate authority. Empire is also adopting "balancing authority area" in its tariff consistent with the Commission's adoption of "balancing authority area," instead of "control area," and removing tariff provisions governing transmission-related services.

### **Commission Determination**

27. Empire generally complied with the directives of Order No. 697. However, Empire's proposed tariff revisions neglect to remove the now-codified affiliate sales

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<sup>35</sup> April 14 Order at P 149; *see also*, July 8 Order at P 131.

<sup>36</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC 61,295 (2007).

restriction (section 2(a) of Empire's market-based rate tariff) as well as the now-codified change in status reporting requirement (section 9). In addition, section 6 of Empire's market-based rate tariff is applicable to transmission services, which is no longer permitted in market-based rate tariffs. Accordingly, the Commission will conditionally accept Empire's revised market-based rate tariff subject to Empire filing, within 30 days of the date of this order, a revised market-based rate tariff that is in full compliance with the requirements of Order No. 697.<sup>37</sup>

The Commission orders:

- (A) Empire's request for rehearing is hereby denied.
- (B) Empire is hereby directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff consistent with Order No. 697, as discussed in the body of this order.
- (C) Empire's September 17, 2007 compliance filing, as modified in accordance with Ordering Paragraph (B) above, is hereby accepted for filing, as discussed in the body of this order.
- (D) Empire is hereby ordered to make refunds, within 30 days of the date of issuance of this order, with interest, calculated pursuant to 18 C.F.R. § 35.19(a) (2006), and to file a refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of this order. If no refunds are due, Empire is expected to file with the Commission within 30 days of the date of issuance of this order so stating.
- (E) The section 206 proceeding in Docket No. EL05-67-000 is hereby terminated.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>37</sup>In its Order Clarifying the Final Rule, the Commission clarified that sellers must comply with all of the requirements of Order No. 697 as of the effective date of the rule. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 924.